

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 20, 2006

STATE OF TENNESSEE v. JOHN LEWIS COCKHERN

**Direct Appeal from the Circuit Court for Montgomery County
No. 40135 Michael R. Jones, Judge**

No. M2005-02778-CCA-R3-CD - Filed July 26, 2006

The appellant, John Lewis Cockhern, pled guilty in the Montgomery County Circuit Court to aggravated assault, a Class C felony, and the trial court sentenced him to three years to be served on probation. Subsequently, the trial court revoked the appellant's probation and ordered him to serve his sentence in confinement. In this appeal, the appellant challenges the sufficiency of the evidence to revoke his probation. He also requests that this court establish a rule regarding the admissibility of uncertified copies of judgments of conviction at probation revocation hearings. Upon review of the record and the parties' briefs, we affirm the trial court's revocation of the appellant's probation. Regarding the admissibility of uncertified copies of judgments of conviction, the appellant requests an advisory opinion, which this court will not issue.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID G. HAYES and THOMAS T. WOODALL, JJ., joined.

Roger E. Nell (on appeal) and James Stevens (at trial), Clarksville, Tennessee, for the appellant, John Lewis Cockhern.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; and Chris Clark, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The record reflects that on March 12, 1999, the appellant pled guilty to aggravated assault, and the trial court sentenced him to three years to be served on probation. On April 23, 1999, the appellant's probation officer filed a probation violation report, alleging that the appellant had violated probation by failing to report to his probation officer, being unemployed, changing his residence without informing his probation officer, failing to pay court costs and fees, and failing to

appear for a random drug screen. A probation violation warrant was filed on May 7, 1999. On November 17, 2004, the appellant's new probation officer filed an amended probation violation report, alleging that the appellant had violated probation by failing to report to his probation officer, pleading guilty to domestic abuse assault in Iowa in August 2000, being unemployed, changing his residence without informing his probation officer, failing to pay court costs and fees, and failing to appear for random drug screens. That same day, an amended warrant was issued.

At the probation revocation hearing, Lisa Russell from the Tennessee Board of Probation and Parole testified that she recently had been assigned to supervise the appellant's probation because the appellant's original probation officer, Alvin Brown, was no longer working for the agency. In 1999, Brown had filed a probation violation report against the appellant. Russell filed an amended report in 2004 because the appellant had been convicted of a crime in Iowa in 2000. The State attempted to introduce a copy of the appellant's Iowa judgment of conviction into evidence. However, the appellant objected on the basis that the copy was not certified. The trial court inspected the document and overruled the objection, concluding that the document was reliable.

Russell testified that the appellant never reported to the Board of Probation and Parole after he pled guilty to aggravated assault in Tennessee and that she had never seen him before. The appellant owed thousands of dollars in court costs, never provided proof of employment, never appeared for random drug screens, and never informed the Board of Probation and Parole about his residence. On cross-examination, Russell testified that she had taken over the appellant's case within the last year. She said that the appellant had been instructed to report to the Board of Probation and Parole Office after his guilty plea but that "we've not seen him since he was told that in court."

The appellant testified that he pled guilty to aggravated assault in March 1999 but was not released from jail until May 1999 because he was being held for other charges. He said that after his guilty plea, no one talked to him about the terms of his probation. The appellant was still in jail when a probation violation warrant was issued against him on May 7, 1999. After the appellant was released from jail in Tennessee, he returned to work and traveled around the country as a painter for farmers. At some point, the appellant learned that a probation violation warrant had been issued for his arrest in Tennessee. However, the appellant did not return to Tennessee because "the best thing for me was just to stay away from this place, you know, and that is what I chose to do." The appellant acknowledged that he pled guilty to domestic abuse assault in Iowa in 2000. He said that he currently was working and that he could follow the terms of his probation once someone explained them to him. He said that his job requirements would make reporting to his probation officer difficult but that he could report to her by telephone. He also said he could make regular payments toward his court costs and fees. On cross-examination, the appellant acknowledged that he signed a probation order in March 1999 and that he knew he was on probation when he left Tennessee. He said that he stopped taking drugs when he left Tennessee and that he would be willing to take a drug test.____

_____ The trial court held that the appellant violated probation, stating, “Take a pick as to why - - what rule has been violated, but the basic one is he just didn’t do anything at all. So I will find him in violation of his failure to report.” The trial court ordered the appellant to serve his sentence in confinement with credit for time served.

II. Analysis

The appellant challenges the sufficiency of the evidence to revoke his probation. In addition, he contends that the uncertified Iowa judgment of conviction is hearsay and that the trial court erred by admitting it into evidence. The appellant concedes, however, that any error was “nullified” because he admitted to the conviction and because the trial court did not rely on the conviction to revoke his probation. Nevertheless, he contends that this court “should establish the appropriate rule for the admissibility of copies of judgments [of] convictions at probation revocation hearings.” The State argues that although the judgment of conviction is hearsay, the trial court did not err by admitting it into evidence because the strict rules of evidence do not apply in a probation revocation hearing. See Barker v. State, 483 S.W.2d 586, 589 (Tenn. Crim. App. 1972). The State also argues that, in any event, there was ample evidence for the trial court to revoke the appellant’s probation.

Upon finding by a preponderance of the evidence that an appellant has violated the terms of his probation, a trial court is authorized to order the appellant to serve the balance of his original sentence in confinement. See Tenn. Code Ann. §§ 40-35-310, -311(e); State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Such probation revocation rests in the sound discretion of the trial court and will not be overturned by this court absent an abuse of that discretion. See State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). An abuse of discretion exists when “the record contains no substantial evidence to support the trial court’s conclusion that a violation has occurred.” State v. Conner, 919 S.W.2d 48, 50 (Tenn. Crim. App. 1995).

In this case, the trial court held that the appellant’s failing to report warranted revoking his probation. The evidence overwhelmingly supports the trial court’s conclusion. The appellant admitted that after he was released from jail in 1999, he left Tennessee and never reported to his probation officer. As to the appellant’s claim that the trial court improperly admitted an uncertified copy of a judgment of conviction into evidence, the appellant is seeking an advisory opinion regarding an issue which he does not claim affected his probation revocation hearing. This court cannot provide such an opinion. See Nichols v. State, 90 S.W.3d 576, 607 (Tenn. 2002) (stating that this court erred by providing an advisory opinion).

III. Conclusion

Based upon the record and the parties’ briefs, we affirm the judgment of the trial court.

NORMA McGEE OGLE, JUDGE